

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6970

Petition of RCC Atlantic, Inc., for Consent to Transfer     )  
Certain Property to RCC Atlantic Licenses, LLC, and to     )  
Mortgage or Pledge Its Property and Provide Guaranties     )  
or Other Security     )  
   )

Order entered: 8/6/2004

**I. INTRODUCTION**

On May 26, 2004, RCC Atlantic, Inc., d/b/a UniceL ("RCC"), filed a petition ("Petition") with the Public Service Board ("Board") requesting that the Board consent, pursuant to 30 V.S.A. §§ 109 and 232, to the transfer of certain Federal Communications Commission ("FCC") licenses to RCC's wholly-owned subsidiary, RCC Atlantic Licenses, LLC (herein "RCC Atlantic Licenses"). The Petition further requested consent, pursuant to 30 V.S.A. § 232, to the mortgage or pledge of RCC's property and the provision of guaranties or other security in connection with a credit agreement executed by RCC's parent, Rural Cellular Corporation ("Rural Cellular").<sup>1</sup> RCC supported the Petition by the prefiled testimony and exhibits of Elizabeth L. Kohler, Vice President of Legal Services for Rural Cellular and its affiliated companies including RCC.

RCC filed a draft Proposal for Decision on July 14, 2004. On June 30, 2004, the Department of Public Service filed a letter with the Board recommending that the Board grant the consents and approval sought by RCC without further investigation or hearing. Sections 109 and 232 provide for an opportunity for hearing. Based on the absence of a request for a hearing from any party, the lack of objection by any party to RCC's Petition and to the issuance of the draft Proposal for Decision as the Board's decision, and review of those filings and the record as a whole, I determined that an evidentiary hearing was not necessary.

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<sup>1</sup> The Petition also requested approval of this transaction pursuant to 30 V.S.A. § 108. However, this section applies only to Vermont domestic corporations. Therefore, because RCC is a Minnesota corporation, approval under this section is not necessary.

Under Sections 109 and 232, the Board may consent to the transfer of RCC's FCC licenses upon a finding that the proposed transfer will promote the general good of the state. Under Section 232, the Board may consent to the mortgage or pledge of RCC's property and the provision of guaranties or other security in connection with a credit agreement executed by Rural Cellular only if it finds that such actions will be consistent with and promote the general good of the state of Vermont. I recommend that the Board make such findings and issue the requested approvals under Sections 109 and 232 based on the specific findings of fact that follow.

## **II. FINDINGS OF FACT**

Based upon the evidence of record, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

1. RCC is a Minnesota corporation transacting business in Vermont, provides certain telecommunications services in Vermont within the meaning of 30 V.S.A. § 203(5), and owns and operates public-service property in connection therewith within the meaning of § 201 as to make it subject in certain respects to the Board's jurisdiction. Pet. at 1.

2. RCC is a provider of "commercial mobile radio services" (PCS, cellular, and paging, collectively referenced as "CMRS"), providing service within the meaning of "mobile service" as defined by Section 153(27) of Title 47, United States Code, and provides telecommunications services as defined in Section 254(d) thereof and Section 54.703(a) of the Code of Federal Regulations. Pet. at 2.

3. RCC is a wholly-owned subsidiary of Rural Cellular, which is a publicly-traded company with over 756,000 telecommunications-service subscribers that operates (with its affiliates) in the States of Alabama, Mississippi, Kansas, Oregon, Washington, New Hampshire, New York, Massachusetts, Maine, Minnesota, North Dakota, South Dakota, Vermont, and Wisconsin. Pet. at 2.

4. RCC Atlantic Licenses is a wholly-owned subsidiary of RCC and a duly-organized, limited-liability company in the state of Minnesota. Pet. at 2; Kohler pf. at 2, 3.

5. On or about March 25, 2004, Rural Cellular entered into a Credit Agreement for ongoing financing, including revolving loans and letters of credit, and it and each of its subsidiaries, including RCC, entered into a related Guarantee and Collateral Agreement with

Lehman Commercial Paper, Inc., as administrative agent acting on behalf of various lenders, to provide security in connection with the Credit Agreement. Pet. at 2; Kohler pf. at 2-3; exh. RCC-2.

6. Under the Guarantee and Collateral Agreement, Rural Cellular and RCC agree to use commercially reasonable efforts to cause RCC to transfer within 90 days of the execution of the agreement all FCC licenses held by RCC, including RCC's Vermont licenses, to one or more "Dropdown Subsidiaries"; the agreement defines "Dropdown Subsidiary" as a wholly-owned subsidiary that is a direct subsidiary of RCC formed for the purpose of holding the FCC licenses held as of the date of the agreement. Pet. at 3; Kohler pf. at 3; exh. RCC-2.

7. On or about April 20, 2004, the Secretary of State of the State of Minnesota issued a Certificate of Organization to RCC Atlantic Licenses as a limited-liability corporation. Pet. at 3; Kohler pf. at 3; exh. RCC-3.

8. To comply with the terms of the Guarantee and Collateral Agreement, it is RCC's intention to transfer its FCC licenses, including its Vermont licenses,<sup>2</sup> to RCC Atlantic Licenses, a transfer that constitutes a sale of ten percent or more of RCC's utility property used to provide telecommunications service in Vermont. Pet. at 3; Kohler pf. at 3.

9. The Guarantee and Collateral Agreement also requires that Rural Cellular's subsidiaries, including RCC, pledge and grant to the administrative agent, for the benefit of the secured lenders, a security interest in certain property listed in Section 3 of the agreement. Pet. at 3; Kohler pf. at 3; exh. RCC-2.

10. As a CMRS provider, RCC provides competitive, mobile-telecommunications services to telephone customers throughout Vermont. Pet. at 4; Kohler pf. at 4.

11. The transfer of RCC's Vermont licenses to RCC Atlantic Licenses and the provision

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<sup>2</sup> RCC's Vermont FCC Licenses consist of the following Radiotelephone Service Stations:

KNKA 797            Market No. 248 A – Burlington, Vermont MSA

KNKN 832           Market No. 679 A – Vermont RSA 1 – Franklin

KNKN 749           Market No. 680 A – Vermont RSA 2 – Addison.

Kohler pf. at 3; exh. RCC-4.

of security for the revolving borrowing arrangements will promote the general good of Vermont by allowing RCC access to revolving financing instruments that will assist in the ongoing provision and expansion of competitive telephone service in the state and elsewhere. Kohler pf. at 4.

12. At the same time, the transfer and provision of security contemplated in the Guarantee and Collateral Agreement will have no negative or perceptible impact on Vermont consumers. Kohler pf. at 4

### **III. CONCLUSIONS**

The evidence in this proceeding demonstrates, and I find, that the proposed transfer of RCC's Vermont licenses to RCC Atlantic Licenses, and the mortgage or pledge of RCC's property and the provision of guaranties or other security in connection with the Guarantee and Collateral Agreement are consistent with and promote the general good of the state. Accordingly, I recommend that the Board find that the proposed transfer of RCC's Vermont licenses to RCC Atlantic Licenses and the mortgage or pledge of RCC's property and the provision of guaranties or other security in connection with the Guarantee and Collateral Agreement are consistent with and promote the general good of the State of Vermont and issue an order to that effect.

All parties to this proceeding have waived their rights to comment on the Proposal for Decision in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 5<sup>th</sup> day of August, 2004.

s/Gregg Faber  
Gregg Faber  
Hearing Officer

**IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and conclusions of the Hearing Officer are adopted.
2. The Board hereby consents to and approves the proposed transfer of RCC Atlantic, Inc., d/b/a Unicel's ("RCC's") Vermont licenses to RCC Atlantic Licenses, LLC, pursuant to 30 V.S.A. §§ 109 and 232, and consents to the mortgage or pledge of RCC's property and the provision of guaranties or other security in connection with the Guarantee and Collateral Agreement dated March 25, 2004, pursuant to 30 V.S.A. § 232, and finds that the same will be consistent with and promote the general good of the State of Vermont.
3. A Certificate of consent to the transfer of RCC's Vermont licenses to RCC Atlantic Licenses, LLC, pursuant to 30 V.S.A. § 109, shall be issued.

DATED at Montpelier, Vermont, this 6<sup>th</sup> day of August, 2004.

s/Michael H. Dworkin	)	
	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/John D. Burke	)	

OFFICE OF THE CLERK

Filed: August 6, 2004

Attest: s/Judith C. Whitney  
Acting Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*